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IN THE

Supreme Court of the United States

OCTOBER TERM
1970

NO. 1056

HING WAN WONG,
Petitioner

v.

LIQUOR CONTROL COMMISSION,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

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The Petitioner, Hing Wan Wong, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Supreme Court of Connecticut entered in this proceeding on September 29, 1970.

OPINION BELOW

The opinion of the Supreme Court of Connecticut, not yet reported, appears in the Appendix hereto. The case was on appeal from the Court of Common Pleas of the State of Connecticut. The Opinion of the Court of Common Pleas of Connecticut is not reported and appears in the Appendix hereto. The case, at the Court of Common Pleas, was on appeal from the Liquor Control Commission of the State of Connecticut. The Opinion of the Liquor Control Commission is not reported and appears in the Appendix

hereto. Criminal proceedings were started and nolled in Circuit Court for the State of Connecticut as a result of the same charges which led to the administrative hearing. These proceedings were not reported and appear in the Appendix hereto.

JURISDICTION

The Opinion of the Supreme Court of Connecticut was entered on July 28, 1970. A timely Motion for Permission to Reargue was denied on September 23, 1970. This petition for certiorari was filed within ninety (90) days of that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED

I. Whether the Supreme Court of Connecticut has misinterpreted and misapplied the holding of the Supreme Court of the United States in *Colonnade Catering Corporation v. United States*, 397 U.S. 72, 90 S.Ct. 774, 25 L.Ed. 2d 60 (1970) and, in so doing, denied the Petitioner his rights under the Fourteenth Amendment?

II. Whether the Fourth and Fourteenth Amendments preclude evidence obtained by a State as a result of an illegal search from being utilized in a quasi-judicial administrative hearing which imposes penal sanctions?

III. Whether the nolle prosequi of a criminal charge, under the circumstances of this case, denies the Petitioner his Fourteenth Amendment right to a full and fair hearing (a) when the effect of the nolle is to preclude the petitioner from obtaining a hearing on his Motion to Suppress evidence; (b) when the use of the nolle permits that evidence to be introduced at an administrative hearing charging the Petitioner with the identical statutory violation involved in the criminal proceeding; and (c) when that evidence could not have been so utilized had the Motion to Suppress been granted?

CONSTITUTIONAL PROVISION INVOLVED

The constitutional provision involved is the Fourteenth Amendment.

STATUTORY PROVISIONS INVOLVED

The statutes involved are: C.G.S. §§30-55, 30-60, 30-91, 30-106, 30-107, 54-33f, *infra*, in Appendix E.

STATEMENT OF THE CASE

Petitioner is the owner-operator of a Chinese-American Restaurant with a liquor permit located in Hartford, Connecticut. On Saturday, July 14, 1967, at about 2:00 AM Petitioner was arrested on said premises and charged with dispensing liquor after hours in violation of C.G.S. §30-91. Liquor cannot be sold on Saturdays in Connecticut from 1:00 AM until 9:00 AM. Violations of C.G.S. §30-91 are misdemeanors punishable by not more than one (1) year imprisonment and/or a $1,000 fine. C.G.S. §30-107, §30-113.

In the criminal proceeding the Petitioner moved to suppress the evidence on the ground that it was unconstitutionally obtained, being the fruit of an illegal, warrantless search. The Prosecutor, on November 10, 1967, rather than argue the Motion to Suppress, nolled the charge. At that time, he represented to the the Court that "I do feel we cannot prevail on it [the Motion to Suppress]." Appendix D, p. A-14.

Thereafter, on January 4, 1968, the State Liquor Control Commission notified the Petitioner to appear before it to show cause why his liquor license should not be suspended under C.G.S. §30-55 for the same alleged violation of C.G.S. §30-91 which had been the subject matter of the nolled criminal proceedings.

Despite the fact that, under Connecticut law, evidence which has been suppressed in a criminal proceeding cannot be utilized in any hearing or trial, C.G.S. §54-33f, an analy-

sis of the evidence seized was introduced, over objection, at the administrative hearing. On the basis of that evidence, the Liquor Control Commission suspended the Petitioner's permit for ten (10) days.

The Petitioner appealed to the Court of Common Pleas pursuant to C.G.S. §30-60 and that Court found that the evidence was illegally obtained. In reversing the Liquor Control Commission, that Court went on to hold that evidence illegally obtained could not be utilized at the administrative hearing.

The Respondent then appealed to the Supreme Court of Connecticut which overruled the Court of Common Pleas and found that the search had been legal. In so doing, that Court based its finding that the warrantless, exploratory search was legal on an incorrect interpretation of this Court's decision in *Colonnade Catering Corporation v. United States*, 397 U.S. 72, 90 S.Ct. 774, 25 L.Ed. 2d 60 (1970).

These essential facts surrounding the search are not in dispute. Three Hartford Police Officers, acting on the speedy information of an unnamed person, went to the petitioner's place of business at approximately 1:30 AM on July 14, 1967. With the aid of a flashlight, they saw four people inside the restaurant. After they entered the establishment, they searched the premises for approximately fifteen to twenty minutes. As a result of their search, they found two glasses on the floor, one of which had been spilled. They then arrested the petitioner. An analysis of the contents of the other glass revealed it to contain 19.3 percent alcohol by volume.

REASONS FOR GRANTING THE WRIT

ARGUMENT I

The Supreme Court of the State of Connecticut has misinterpreted and misapplied this Court's decision in COLONNADE CATERING CORPORATION v. UNITED

STATES, 397 U.S. 72, 90 S. Ct. 774, 25 L.Ed. 2d 60 (1970) and has thereby denied the Petitioner rights guaranteed him by the Fourteenth Amendment.

The Supreme Court of Connecticut, in reversing the decision of the Court of Common Pleas, made an independent determination that the exploratory and warrantless search was legal. In so doing, it applied *Colonnade Catering Corporation v. United States* in the following fashion:

> [W]e find decisive support for the actions of the police in this case in *Colonnade Catering Corporation v. United States*, 397 U.S. 72, 90 S. Ct. 774, L. Ed. 2d 60, in which the United States Supreme Court sustained the right of federal agents, without a search warrant, to break open a locked liquor storeroom over the protest of the owner.
>
> The nature of the liquor business is such that "'the police power to regulate and control it run broad and deep'". *Aminiti v. Liquor Control Commission*, 144 Conn. 550, 552, 135 A. 2d 595. "The states may absolutely prohibit the manufacture, transportation, sale or possession of such liquor within their borders or they may permit these activities under the conditions prescribed by their legislatures. To these ends they can adopt such measures as they may deem reasonably appropriate." *Pierce v. Albanese*, 144 Conn. 241, 248, 129 A. 2d 606. Section 30-106 of the General Statutes provides, in part, that the liquor control commission, "and any member of any organized police department in any town, city or borough, . . . may, at any time, enter upon the premises or any permittee to ascertain the manner in which such person conducts his business and to preserve order". In *Colonnade Catering Corporation v. United States*, supra, the petitioner sought the return of seized liquor and its suppression as evidence. Federal agents had visited the premises where liquor was being served. Noting a possible violation of the federal excise tax law, they asked the manager to open a locked storeroom and, when he refused, they broke it open and removed the liquor in controversy. Congress had authorized the secretary of the treasury or his delegate to enter and inspect the premises of retail dealers in

> liquors and had provided a fine for a licensee who refused to permit such inspection. In that case the court found no constitutional violation involved, and it said (p. 77): "We deal here with the liquor industry long subject to close supervision and inspection. As respects that industry, and its various branches including retailers, Congress has broad authority to fashion standards of reasonableness for searches and seizures. Under the existing statutes, Congress selected a standard that does not include forcible entries without a warrant. It resolved the issue, not by authorizing forcible, warrantless entries, but by making it an offense for a licensee to refuse admission to the inspector." Similarly, in exercising the broad powers which it has over the liquor industry, our General Assembly has specifically provided that city police, as in this case, "may, at any time, enter upon the premises of any permittee to ascertain the manner in which such person conducts his business". The language does not purport to authorize a forcible entry without a warrant and none was indulged in here. The actions of the police which are complained of did not constitute an illegal search and seizure.

Such an application of *Colonnade* is initially defective because the standards established in that case were intended to apply, not to all searches for liquor, but only to those in which revenue-producing statutes were being violated. The Government had contended, in *Colonnade*, that

> Congress has been most solicitous in protecting the revenue against various types of fraud and to that end has repeatedly granted federal agents power to make warrantless searches and seizures of articles under the liquor laws.

Relying on *Boyd vs. United States*, 116 U.S. 616, 624, 29 L.Ed. 746, 748, 6 S.Ct. 524, this Court agreed that

> . . . in the case of excisable and dutiable articles, the government has an interest in them for the payment of the duties thereon, and until such duties are paid has

> a right to keep them under observation, or to pursue and drag them from concealment.

The Court therefore found that

> The general rule laid down in *See v. City of Seattle*, supra, at 545, 18 L.Ed. 2d at 947 — "that administrative entry, without consent, upon the portions of commercial premises which are not open to the public may only be compelled through prosecution or physical force within the framework of a warrant procedure" — is therefore not applicable . . .

The instant search was not conducted in furtherance of any revenue statute. It was conducted as a result of speedy information that the petitioner was violating C.G.S. §30-91 by engaging in after hours sales, a statute which was passed in pursuance of a broad public policy for the protection of the public at large, *Noonan v. Galick*, 19 C.S. 308, 112 A.2d 892 (1955). The standards established by *Colonnade* are an exception to the normal Fourth Amendment requirements. If they are inapplicable, the instant search would be constitutionally defective. *See v. City of Seattle*, 387 U.S. 541 (1967).

Even if the standards of *Colonnade* might apply to a search for a violation of C.G.S. 30-91, the Supreme Court of Connecticut's decision is still erroneous. It fails to take into account the further holding of this Court that, in the absence of a specific statutory grant of greater powers to enforcement officers than would normally apply, the Fourth Amendment and its various restrictive rules apply to searches for liquor. The legislature of Connecticut has not enacted any such statutory grant. The Supreme Court of Connecticut did, in its decision, refer to C.G.S. §30-106 which provides that the city police

> may, at any time, enter upon the premises of any permittee to ascertain the manner in which such person conducts his business.

While that statute does confer a right of entry, it does not create or grant a right to make a warrantless, exploratory search.

The language of C.G.S. §30-106 is substantially identical to the right of entry statute before this Court in *See v. City of Seattle*, supra. In deciding the search involved in that case to be in violation of the Fourth Amendment, this Court said that

> The businessman, like the occupant of a residence, has a constitutional right to go about his business free from unreasonable official entries upon his private commercial property. The businessman, too, has that right placed in jeopardy if the decision to enter and inspect for violation of regulatory laws can be made and enforced by the inspector in the field without official authority evidenced by a warrant. Id., at 543, 18 L.Ed. 2d, at 946.

Moreover, the right of entry conferred by C.G.S. §30-106 cannot be read divorced from its statutory context. That statute specifically provides for arrests on warrants for violations of C.G.S. §30-91. It further grants a right of entry to ascertain the manner in which a permittee is conducting his business. Significantly, C.G.S. §30-107 then provides that if an arrest is made without a warrant and if evidence is seized as a result thereof, a warrant must then be obtained dating back to the time of such arrest and seizure. Such a warrantless arrest is permitted, however, only if the enforcement officer finds the defendant in the act of illegally selling alcohol. Nothing in these statutes would permit the police to enter, conduct an exploratory search, and then arrest the petitioner for a suspected violation based upon the fruits of their search. Even if such a search could arguably be validated by a subsequent warrant issued pursuant to C.G.S. §30-107, the fact remains that no such warrant was ever sought or obtained.

In summation, a warrantless, exploratory search was conducted here in violation of the normal Fourth Amendment rules. Nothing in the language or holding of the *Colonnade* case or the laws of the State of Connecticut can sanctify this illegal activity.

ARGUMENT II

Evidence obtained as a result of an illegal search and seizure was utilized against the Petitioner in a quasi-judicial administrative hearing in violation of rights guaranteed to the Petitioner by the Fourteenth Amendment.

This case presented in Connecticut for the first time the issue of whether the exclusionary rule of the Fourth Amendment to the Constitution of the United States is applicable to a quasi-judicial state administrative agency.

The Court of Common Pleas of Connecticut held that the exclusionary rule was applicable. The Supreme Court of Connecticut reversed that decision on the ground that the search was legal. The petitioner alleges that that finding of the Supreme Court of Connecticut was error. Should this Court agree with that contention, then the scope of the exclusionary rule would remain the issue in this case.

The essence of the exclusionary rule is that evidence which has been secured in violation of the Fourth Amendment should not be admitted into evidence. The basic purpose of the rule in criminal cases is to deter unconstitutional methods of law enforcement officers. The rule is not a penalty, but is derived from the principle that the state cannot and must not profit from its own wrong. Its purpose in deterring unconstitutional methods of law enforcement can only be served by denying the government any and all profit from such methods. When exceptions to the rule are adopted, its deterrent effect is eliminated and law enforcement officers are thereby encouraged to engage in unlawful conduct. Such a rule serves to maintain and reinforce the "imperative of judicial integrity." *Elkins v. U.S.*, 364 U.S. 206, 222. As Mr. Justice Brandeis stated in his eloquent dissent in *Olmstead v. U.S.*, (1928) 277 U.S. 438, 485:

> "Our government is the potent, the omnipresent teacher. For good or for evil, it teaches the whole people by its example . . . If the government becomes a law breaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy."

The 1961 decision of *Mapp v. Ohio*, 367 U.S. 643 made the exclusionary rule of the Fourth Amendment applicable to state court proceedings under the Due Process Clause of the Fourteenth Amendment. It has already been held in Connecticut that due process requirements are applicable to state administrative bodies such as zoning board and liquor commission hearings. *Wardwell v. Zoning Board of Appeals*, 136 Conn. 2; *Parsons v. Board of Zoning Appeals*, 140 Conn. 290; *Aminti v. Liquor Control Commission*, 144 Conn. 550, 552; 2 Am. Jur. 2d, Section 351, 163 ff. The Liquor Control Commission is a quasi-judicial agency which, in this case, was enforcing a criminal law (Section 30-91) and applying penal or disciplinary sanctions. This is not unlike the case of a forfeiture proceeding which, although civil in nature, is criminal in substance and effect.

Such was the holding of the Supreme Court of the United States in *One 1958 Plymouth Sedan v. Commonwealth of Pennsylvania*, 380 U.S. 693, 697-698. In that case, this Court ruled that, although a forfeiture proceeding by definition of Pennsylvania law was civil in nature, it was penal in effect because the forfeiture of an automobile valued at a thousand dollars exceeded the penalty for the original criminal offense with which the appellant was charged in the Pennsylvania lower court. This Court ruled that in such proceedings the exclusionary rule applies. Similarly, in this case, the suspension of the Petitioner's license for ten days works a far greater economic and personal hardship and penalty upon him in denying his right to sell during this period than any fine that might have been imposed by the Circuit Court for conviction under Section 30-91.

The dictum in the *Mapp* case at page 655 of the opinion would indicate that the Supreme Court's intent was to have the exclusionary rule apply in any state court proceeding, be it civil or criminal:

"We hold that all evidence obtained by searches and

> seizure in violation of the constitution is, by the same authority, inadmissible *in a state court.*" (Italics added)

Although this Supreme Court has not definitively ruled that the exclusionary rule is applicable to civil or administrative proceedings, there is a growing authority, before and after *Mapp*, both on the federal and state court levels, to make such rule applicable to such proceedings, particularly when they are of a quasi-judicial or quasi-criminal nature. *Iowa v. Union Asphalt & Road Oils, Inc.*, 281 F. Supp. 391 (S.D. Iowa 1968); *United States v. Blank*, 261 F. Supp. 180 (N.D. Ohio 1966); *Lassoff v. Gray*, 207 F. Supp. 863 (W.D. Ky., 1962); *Rogers v. United States*, 97 F. 2d 691 (1st Cir., 1938); *Carlisle v. State*, 274 Ala. 436, 163 So. 2d 586 (1964); *People v. Moore*, 69 Cal. 2d 674, 72 Cal. Rptr. 800 (Sup. Ct., 1968); *Carson v. State*, 221 Ga. 229, 144 S.E. 2d 394 (1965).

Insofar as administrative proceedings are concerned after *Mapp* in 1961, the exclusionary rule has been applied in several major jurisdictions, particularly to regulatory agencies. For a prominent example, in *Leogrande v. State Liquor Authority of New York*, 25 App. Div. 2d 255, 268 N.Y.S. 2nd 433 (1966) the very question in that case was decided as to whether the exclusionary rule applies to a liquor authority. The New York Court in a forceful and cogent opinion proclaimed:

> ". . . All of the reasons in policy which suggest the application of the exclusionary rule to illegal searches and seizures by public officers in criminal proceedings apply equally to administrative proceedings of the present character, namely, those involving penalties, forfeitures, or other sanctions for the violation of law or regulation . . . The exclusionary rule is addressed to the obnoxiousness of illegal conduct by public officials and the visiting by officials of serious official consequences upon the victims of such illegal conduct. . . *The exclusionary rule rests on a theory of deterrence; that policy would not be served if the illegal owcial*

> *activity could be used, despite unavailability in criminal proceedings, to effect parallel sanctions of forfeiture in an administrative proceeding.*" (Italics added)

The *Leogrande* case was reversed on appeal (19 N.Y. 2d 418; 277 N.E. 2d 647) on the grounds that the licensee did not timely object to the introduction of the illegally obtained evidence at the hearing, which was not the case here since the Petitioner did timely object before the commission and before the trial court. The *Leogrande* ruling was finally embraced and adopted by the New York Court of Appeals in the joint cases of *Malik v. N. Y. State Liquor Authority* and *Finn's Liquor Shop v. State Liquor Authority*, 24 N.Y. 2d 647, 656, 661, 301 N.Y.S. 2d 584, 589, 593 (1969) wherein the court held that state agencies charged with clearly quasi-judicial administrative responsibilities must conduct their investigation and enforcement function in accordance with the federal constitution.

Relying on that authority, the Court of Common Pleas of Connecticut, in the instant case, also applied the exclusionary rule to an administrative hearing.

A similar decision was rendered by the Seventh Circuit in the case of *Knoll Associates, v. F.T.C.*, 397 F. 2d 530 (1968).

In *Knoll*, a disgruntled employee (Prosser), tired of getting the "run-around," called the Federal Trade Commission and offered documents which would show that his employer had violated the Clayton Act. A proceeding was instituted against Knoll and a hearing was held at which the documents obtained by Prosser were used. The hearing examiner issued a cease and desist order against Knoll. Knoll appealed, contesting the use by the hearing examiner of the evidence obtained by Prosser. The Seventh Circuit held:

> The action of the Commission in utilizing the fruits of the misconduct by Prosser violated rights of the peti-

tioner protected by the Fourth Amendment to the Federal Constitution.

We agree with petitioner that the use of the stolen documents renders the Commission's order unenforceable.

However, other courts before which the issue has been raised, have decided that the exclusionary rule does not apply to administrative agencies.

The Ninth Circuit has declined to apply the exclusionary rule to hearings before the NLRB. *NLRB v. South Bay Daily Breeze*, 415 F.2d 360. In a review of an NLRB order invalidating an election of a bargaining agent on grounds of employer interference, that Circuit reasoned that a document taken from the employer could be admitted in evidence. The rationale was in part based on the fact that there was no showing of government complicity. But the court also stated that the exclusionary rule applies only to criminal or quasi-criminal proceedings, and not to administrative hearings.

Similarly, the courts of Ohio, and apparently California, have refused to apply the exclusionary rule to administrative hearings. *Soldmen v. Liquor Control Commission*, 4 Ohio St. 2d. 31, 212 N.E. 2d 595 (1965). *People v. Gonzales*, 63 Cal. Rptr. 581.

As Mr. Justice Brennan declared in his dissenting opinion in *Cleary v. Bolger*, 371 U.S. 291, 413 (1962), "It has not yet been settled whether *Mapp* applies to administrative proceedings." This case cogently invites settlement of the issue.

ARGUMENT III

The State Prosecutor's abuse of the procedural device of nolle prosequi deprived the Petitioner of a hearing and determination on the issue of a Fourth Amendment violation by the State in contravention of the Due Process Clause of the Fourteenth Amendment.

In *Klopfer v. North Carolina*, 386 U.S. 213, this Court ruled that the prosecutor's procedural device of a "nolle prosequi with leave" denied the accused the right to a speedy trial guaranteed to him by the Sixth and Fourteenth Amendments. Similarly, the Petitioner was denied the fundamental fairness assured by the Due Process Clause of the Fourteenth Amendment when the prosecutor nolle prossed the criminal proceeding in the Circuit Court, thereby depriving him of a full and fair hearing and judicial determination on his motion for suppression of the critical evidence allegedly seized prior to his arrest, in violation of the Fourteenth Amendment. *Dohany v. Rogers*, 281 U.S. 362, 369; *Missouri ex. rel. Hurwit: v. North*, 271 U.S. 40, 42.

The prosecutor conceded in open court he could not prevail on the motion testing the warrantless search and seizure, consistent with his onus of proof. *Chimel v. California*, 395 U.S. 752, 762; *U.S. v. Jeffers*, 342 U.S. 48, 51. "Where the burden of proof lies may be decisive of the outcome." *Speiser v. Randell*, 357 U.S. 513, 525. The burden was clearly upon the State to prove the arrest and search and seizure were lawful. *McDonald v. U.S.*, 335 U.S. 451, 456. Furthermore, the prosecutor stated the police conducted "a search of the premises without placing the accused under arrest," i.e. the fifteen to twenty minute exploratory search of Petitioner's place of business preceded the arrest. Having so represented to the court, he nolle prossed the cases against the Petitioner, and the court acknowledged it for the record. (Appendix D, p. A-15.)

Under State law, a pre-trial motion to suppress evidence is the only timely, proper and effective method of challenging the validity of a search and seizure in a judicial proceeding. If the motion is granted, the matter suppressed "shall not be admissible in evidence *in any hearing* or trial." (Emphasis added) C.G.S. §54-33. Had the prosecutor proceeded with a full hearing on Petitioner's motion, and, as he anticipated, failed in his burden of proof, once the

motion was granted by the court, the Liquor Control Commission would be permanently barred from entertaining the suppressed evidence. But such hearing was thwarted and denied the Petitioner by the frustrating action of the prosecutor's nolle.

In Connecticut, a nolle terminates the particular proceeding, liberates the accused from custody, and automatically divests the court of the jurisdiction and power to hear and decide the motion. *See v. Gosselin*, 133 Conn. 158, 161; 48 A2d 560.

The motion could not properly be heard by the liquor commission, an administrative body of lay members, since it is a non-judicial tribunal without authority to act thereon. C.G.S. §54-33. Such authority and power are vested by statute solely in a court of competent jurisdiction. Accordingly, by virtue of the nolle, the court and Petitioner were rendered impotent to compel the prosecutor to argue the motion or to prosecute the case. The nolle tactically served to evade the pivitol constitutional issue to the petitioner's ultimate prejudice. The criminal proceeding was terminated at the exclusive prerogative of the prosecutor and the Petitioner's "day in court" was thereby aborted and effectively nullified.

The result of the criminal proceeding is doubly significant, as it may operate as a statutory bar to the commission's disciplinary action. In the event of a finding of not guilty, the commission is expressly prohibited from suspending a license *ab initio*. C.G.S. §30-55.

In fact, the 1969 State Legislature extended the prohibition of any disciplinary action in the event of a court dismissal of the criminal charges. In Connecticut, a nolle is not the equivalent of a dismissal. As a practical matter, however, the criminal charge against Wong may be considered concluded, since he has not, to this date, been reprosecuted or tried on the nolled charge. The entry of a

nolle, dismissal or acquittal warrants, by operation of statute, the erasure of all arrest, police, prosecutor and court records. 1969 Conn. Pub. Act No. 229.

Thus, because of the nolle, the evidence sought to be suppressed was allowed to be used by the State at the subsequent commission hearing, which involved the identical violation of the identical statute as in the criminal proceeding. The commission, in its quasi-judicial capacity, in enforcing the same criminal statute, was applying equally, if not more, punitive sanctions than the court. *One 1958 Plymouth Sedan v. Commonwealth of Pennsylvania*, 380 U.S. 693, 697-698. We submit, since the motion for suppression was the exclusive, proper and timely method to challenge the search and seizure and since the State, in the agency of the prosecutor, expressly declined to accept such challenge, the State should thereby be estopped and precluded, under the particular circumstances of this case, from further utilizing the evidence so challenged in a state administrative hearing. The nolle device here was clearly abused in forever depriving petitioner of a full and fair hearing on the Fourth Amendment issue. The appellate trial court recognized this ineluctable fact and thus reasonably and fairly relied upon the Circuit Court record as a basis of its finding that the search and seizure were illegal.

We contend, however, that the Supreme Court of Connecticut erred in relying, as a basis for its contrary finding, principally upon the record of the commission hearing, which record was limited and circumscribed and restricted solely to the determination as to whether petitioner violated the after-hour sales provisions of C.G.S. §30-91. The Fourth Amendment violation was not presented or heard by the commission, except by petitioner's reference to the prosecutor's representations and nolle action before the criminal court. It was incumbent upon the highest Court of Connecticut to remand the case for a full hearing on the motion to suppress, instead of making an independent,

de novo finding predicated upon a limited and incomplete record.

This Court unanimously and succinctly proclaimed in *Armstrong v. Mano*, 380 U.S. 545, at p. 552:

> "A fundamental requirement of due process is 'the opportunity to be heard'. *Grannis v. Ordean*, 234 U.S. 385, 394. It is an opportunity which must be granted at a meaningful time and in a meaningful manner."

Petitioner was denied such meaningful opportunity on a basic, federal constitutional issue vital to his defense and cause. The State's nolle effectively denied him the fundamental constitutional right to be heard on a critical question pertaining to a Fourth Amendment violation committed by that very State. This constitutional breach by the State of Connecticut cannot be condoned by the Supreme Court of the United States.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Supreme Court of the State of Connecticut.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM

1970

NO.

HING WAN WONG, *Petitioner*

v.

LIQUOR CONTROL COMMISSION, *Respondent*

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CONNECTICUT

APPENDIX

APPENDIX A

OPINION OF THE SUPREME COURT OF CONNECTICUT

HING WAN WONG *v.* LIQUOR CONTROL COMMISSION

Appeal from the suspension of a restaurant liquor permit, brought to the Court of Common Pleas in Hartford County and tried to the court, *O'Sullivan, J.*; judgment sustaining the appeal, from which the defendant appealed to this court. *Error; judgment directed.*

Stephen J. O'Neill, assistant attorney general, with whom, on the brief, was *Robert K. Killian*, attorney general, for the appellant (defendant).

Alexander A. Goldfarb, for the appellee (plaintiff).

ALCORN, C. J. Under date of January 19, 1968, and after a hearing, the liquor control commission notified the plaintiff that his restaurant liquor permit had been suspended for a period of ten days. The reason for the suspension was unsuitability of person by reason of a violation of § 30-91 of the General Statutes by permitting "the sale or the dispensing or consumption or the presence in glasses or other receptacles suitable to permit the consumption of liquor by an individual of alcoholic liquor during prohibited hours." The plaintiff appealed from the suspension to the Court of Common Pleas, which sustained the appeal. The liquor control commission has appealed from the judgment of the court.

The essential facts are not disputed. The plaintiff is the owner-operator of a restaurant in Hartford. A sergeant of the Hartford police department received a complaint of after-hours drinking at the plaintiff's restaurant and, on

Saturday, July 14, 1967, with two other detectives, went to the plaintiff's restaurant at about 1:37 a.m. This was after the hour of closing fixed by § 30-91 of the General Statutes.[1] From the street outside, the sergeant focused his flashlight through a window and saw three people seated at a table with glasses before them. The police knocked on the door of the restaurant and were admitted by the plaintiff. As they entered the restaurant, the people at the table removed the glasses from the table and placed them on the floor. The sergeant picked up one of the glasses which contained an amber-colored liquid which smelled of alcohol. The plaintiff was arrested for a violation of § 30-91 which is a misdemeanor. General Statutes § 30-113. The contents of the glass were analyzed by the laboratory division of the state health department and were certified by both the chief of the toxicological services section and another toxicologist as containing 19.3 percent alcohol by volume. The alcoholic liquor with which § 30-91 is concerned is a liquid or solid containing more than one-half of 1 percent of alcohol by volume. General Statutes § 30-1(2). The plaintiff was presented in the Circuit Court charged with a violation of § 30-91. He moved to suppress any and all evidence obtained by the police at the restaurant on the ground that

[1] "Sec. 30-91. HOURS AND DAYS OF CLOSING. The sale or the dispensing or consumption or the presence in glasses or other receptacles suitable to permit the consumption of liquor by an individual of alcoholic liquor in places operating under hotel permits, restaurant permits, club permits and golf country club permits shall be unlawful on the day of any state or municipal election during the hours of voting, and on Sunday after one a.m., Good Friday or Christmas, except when any Sunday is December thirty-first or January first, and except that any town may, by a vote of a town meeting or by ordinance, (a) allow the sale of alcoholic liquor on Sunday between the hours of twelve o'clock noon and nine o'clock in the evening in hotels, restaurants, clubs and golf country clubs and (b) prohibit the sale of alcoholic liquor from twelve o'clock midnight on Saturday until one a.m. on Sunday; and such sale or dispensing or consumption or presence in glasses or other receptacles suitable to permit the consumption of alcoholic liquor by an individual shall be unlawful on any other day between the hours of one o'clock a.m. and nine o'clock a.m., except that such sale shall be lawful on January first until three o'clock in the morning. . . ."

it was obtained through an illegal search. The misdemeanor charge against him was nolled by the prosecutor on November 10, 1967, on the ground that the "search would be subject to question". On January 18, 1968, a hearing was held by the liquor control commission, after due notice, at which the plaintiff was required to show why his restaurant liquor permit should not be revoked or suspended for a violation of § 30-91. At that hearing the police sergeant testified that he went to the restaurant with the two other detectives, and described what he saw through the window, the entry into the restaurant and the confiscation of the glass and its contents as already related. He also testified that the glass and its contents were taken to the state laboratory for analysis later that morning. The state laboratory report was introduced in evidence over the objection that it was hearsay and that it had been declared to be inadmissible in a court of competent jurisdiction.

The claim now made is that the report from the state laboratory concerning the analysis of the contents of the glass could not properly be considered as evidence because the glass and its contents had been obtained in an illegal search and the report of the analysis from the state health department laboratory was hearsay. The transcript of the proceedings in the Circuit Court does not support the objection made before the liquor control commission that the Circuit Court, in the proceedings there, had ruled that the evidence was inadmissible. Even if a determination by the Circuit Court in the proceedings before it could furnish a valid basis for objecting to the admission of the evidence before the liquor control commission, a point which we need not decide, there was no factual basis for that objection. In the Circuit Court the prosecutor nolle prossed the case because the "search would be subject to question". The only ruling by the court was that "[t]he record may reflect a nolle by the prosecutor". The nolle determined nothing except that it ended the particular proceeding. It was not a bar to a subsequent trial of the

plaintiff for the same offense. *See v. Gosselin*, 133 Conn. 158, 161, 48 A.2d 560; *State v. Garvey*, 42 Conn. 232, 233. On the appeal from the decision of the liquor control commission, however, the Court of Common Pleas determined that the evidence concerning the glass and its contents was illegally obtained and therefore was not admissible. Consequently, that court concluded that there was no evidence from which it could find a violation of § 30-91 and it sustained the plaintiff's appeal. Section 30-60 of the General Statutes provides that on an appeal from the liquor control commission "a transcript of the hearing shall be certified to the court by the commission and the court shall admit so much thereof as is legally competent, relevant and material to the issue within the rules of evidence". Section 30-8, which deals with hearings before the commission, contains no requirement limiting the commission to a consideration of evidence which would be admissible in a court of law. The apparent design of §§ 30-8 and 30-60 is to leave to the reviewing court the problem of extracting from the record certified to it the legally admissible evidence pertinent to the issue on the appeal. Consequently the ruling of the Court of Common Pleas concerning the admissibility of the evidence presents the issue which is before us.

Neither the United States constitution nor the Connecticut constitution forbids searches and seizures. The prohibition is against unreasonable searches and seizures. *State v. Collins*, 150 Conn. 488, 492, 191 A.2d 253. Nor does a search take place when officers merely see what is placed before them in full view. *Ker v. California*, 374 U.S. 23, 43, 83 S. Ct. 1623, 10 L. Ed. 2d 726. We believe it a misnomer to describe what occurred in this case as an illegal search and seizure. The officers observed from the street through a window, with the aid of a flashlight, persons sitting at a table near the bar with glasses before them. The officers knocked on the door and were freely admitted by the plaintiff. They took possession of a glass which they had seen from the street and which contained what

smelled like alcoholic liquor. Quite aside from the approach taken in *Collins* and *Kerr*, however, we find decisive support for the actions of the police in this case in *Colonnade Catering Corporation v. United States*, 397 U.S. 72, 90 S. Ct. 774, 25 L. Ed. 2d 60, in which the United States Supreme Court sustained the right of federal agents, without a search warrant, to break open a locked liquor storeroom over the protest of the owner.

The nature of the liquor business is such that " 'the police power to regulate and control it runs broad and deep' ". *Aminti v. Liquor Control Commission*, 144 Conn. 550, 552, 135 A.2d 595. "The states may absolutely prohibit the manufacture, transportation, sale or possession of such liquors within their borders or they may permit these activities under conditions prescribed by their legislatures. To these ends they can adopt such measures as they may deem reasonably appropriate". *Pierce v. Albanese*, 144 Conn. 241, 248, 129 A.2d 606. Section 30-106 of the General Statutes provides, in part, that the liquor control commission, "and any member of any organized police department in any town, city or borough, . . . may, at any time, enter upon the premises of any permittee to ascertain the manner in which such person conducts his business and to preserve order". In *Colonnade Catering Corporation v. United States*, supra, the petitioner sought the return of seized liquor and its suppression as evidence. Federal agents had visited the premises where liquor was being served. Noting a possible violation of the federal excise tax law, they asked the manager to open a locked storeroom and, when he refused, they broke it open and removed the liquor in controversy. Congress had authorized the secretary of the treasury or his delegate to enter and inspect the premises of retail dealers in liquors and had provided a fine for a licensee who refused to permit such inspection. In that case the court found no constitutional violation involved, and it said (p. 77): "We deal here with the liquor industry long subject to close supervision and

inspection. As respects that industry, and its various branches including retailers, Congress has broad authority to fashion standards of reasonableness for searches and seizures. Under the existing statutes, Congress selected a standard that does not include forcible entries without a warrant. It resolved the issue, not by authorizing forcible, warrantless entries, but by making it an offense for a licensee to refuse admission to the inspector." Similarly, in exercising the broad powers which it has over the liquor industry, our General Assembly has specifically provided that city police, as in this case, "may, at any time, enter upon the premises of any permittee to ascertain the manner in which such person conducts his business". The language does not purport to authorize a forcible entry without a warrant and none was indulged in here. The actions of the police which are complained of did not constitute an illegal search and seizure.

There remains for consideration the question of whether the report from the state health department was competent evidence to establish the nature of the substance found in the glass which the officers took into their possession. We confine our discussion to the assignment of error as briefed by the plaintiff. *State v. Towles*, 155 Conn. 516, 518, 235 A.2d 639. The argument is that, in order to be admissible as an exception to the hearsay rule, the state was required to show the applicability of and compliance with General Statutes §§ 30-108 and 30-109. Section 30-108 permits the court, in a prosecution for manufacturing, selling, or keeping with intent to sell any alcoholic liquor, to order a sample to be conveyed to the state chemist for analysis, and § 30-109 directs the state chemist to analyze the samples presented to him and makes a copy of the record of his analysis legal evidence of the facts stated in it. The sections had no applicability to a hearing before the liquor control commission concerning after-hours sales. That is not to say, however, that the sections referred to furnish the only basis for the admissibility of the report or that the report

was, as claimed by the plaintiff, "illegally made, prepared and authenticated" by the toxicologists of the state health department. This latter claim is premised on the proposition that the toxicologists were not state chemists and consequently were not authorized to make a report under § 30-109.

There is no ruling prescribing the precise character of the reports of public executive or administrative officers which are admissible as an exception to the hearsay rule. 30 Am. Jur. 2d, Evidence, § 999. Where a laboratory test has been made by a public agency under a duty to perform such tests, the report of the test is competent evidence of its contents under the public records exception to the hearsay rule. Id. § 1010. The entries or records of public officers when made of their acts and proceedings by some officer appointed for that purpose may be proved by a copy certified under the hand of such officer. General Statutes § 52-165. The report on its face purports to be a report of the laboratory division of the Connecticut state department of health. It is stated to be a report of a toxicological examination and is certified by the chief of the toxicological services section and another toxicologist as "a true copy of the records of the Toxicological Services Section Laboratory". The plaintiff concedes that the signers were and are employees of the state health department appointed by its commissioner. The toxicology laboratory is a unit of the state health department established and maintained by the commissioner of health the facilities of which are available to all duly constituted prosecuting, police and investigating agencies of the state. General Statutes § 19-8. No claim is made that the analysis, or the report of the result of it, was outside the function of the certifying agency. The report was admissible as competent evidence of the facts recited in it under the public records exception to the hearsay rule. *State v. Torello*, 103 Conn. 511, 515, 131 A. 429; *Branford Trust Co. v. Prudential Ins. Co.*, 102 Conn. 481, 486, 129 A. 379.

It is unnecessary to discuss the remaining assignment of error.

There is error, the judgment is set aside and the case is remanded with direction to dismiss the appeal.

In this opinion the other judges concurred.

APPENDIX B

OPINION OF THE COURT OF COMMON PLEAS

This is an appeal from the action of the defendant commission in suspending plaintiff's restaurant liquor permit for violation of Sec. 30-91 of the general statutes, which deals generally with after hour sale and consumption.

The defendant commission had evidence that at approximately 1:30 a.m. on July 14, 1967, three officers of the Hartford Police Department went to plaintiff's place of business. From the outside, one officer saw four people (including plaintiff), three of whom were seated at a table. There were glasses on the table. After they had knocked, plaintiff admitted the officers. A search revealed one glass under the table where the three had been seated. This glass contained a liquid which smelled of alcohol and which, upon analysis, was found to contain alcohol. Plaintiff was arrested and charged with a violation of Sec. 30-91. In the Circuit Court the charge was nolled with the approval of the presiding judge. Plaintiff had filed a motion to suppress the evidence on the ground that such evidence had been obtained without a warrant, after an illegal search and seizure. The prosecutor told the presiding judge that he did not feel that the state could prevail on the motion and therefore he wanted to nolle the charge.

At the hearing before the defendant commission, plaintiff objected to the admission of this same evidence on the ground that it was illegally obtained, without a search warrant, and told the commission that the case in the Circuit Court had been nolled when the same matter had been raised. It is obvious that the evidence, that the glass found by the search contained alcohol, is crucial to a finding by either the Circuit Court or the defendant commission, that Sec. 30-91 had been violated.

The only case in point sustains plaintiff's position that such evidence, if illegally obtained, is not admissible before the defendant commission. This is *Leogrande v. State Liquor Authority of New York*, 268 N.Y.S.(2) 433. (This case was reversed on appeal on the ground that timely objection had not been made before the State Liquor Authority as to its admissibility of the evidence. 280 N.Y.S. (2) 381)

Sec. 30-60, which governs the procedure on appeal from the defendant commission, provides that the commission shall certify to this court a transcript of the hearing before the commission and the court shall admit so much thereof as is legally competent, relevant and material to the issue within the rules of evidence.

This court finds that the evidence of the glass and its contents was illegally obtained and therefore is not admissible. Such a finding leaves no evidence from which the court can find that Sec. 30-91 was violated by the plaintiff.

The appeal is sustained and the decision of the defendant commission suspending plaintiff's restaurant liquor permit is reversed and set aside.

O'SULLIVAN, J.

APPENDIX C

OPINION OF THE LIQUOR CONTROL COMMISSION

STATE OF CONNECTICUT
LIQUOR CONTROL COMMISSION
STATE OFFICE BUILDING HARTFORD 15,
CONNECTICUT

January 19, 1968

Hing Wan Wong
292-296 Asylum Street
Hartford, Connecticut 06103

Dear Sir:

Your RESTAURANT LIQUOR permit, No. R-94, for premises located at 292-296 Asylum Street, Hartford, Conn., has been SUSPENDED by the Liquor Control Commission after due hearing had on January 18, 1968, for a period of TEN DAYS, which period shall commence not later than ten days from the date of this notice.

The reasons for this suspension are checked below.

UNSUITABILITY OF PERSON BY REASON OF:

Violation of Section 30-91 of the General Statutes, Revision of 1958, in that you did by yourself, servant or agent, permit the sale or the dispensing or consumption or the presence in glasses or other receptacles suitable to permit the consumption of liquor by an individual of alcoholic liquor during prohibited hours.

THE PERMIT MUST BE IN THIS OFFICE DURING THE 10 DAY PERIOD OF SUSPENSION.

Please advise this office when you wish this suspension to start. An Inspector will call to pick up your permit and to post the SUSPENSION PLACARDS which must be displayed in conformity with Section 30-6-A8 of the Regulations.

YOUR PREMISES MUST REMAIN OPEN FOR RESTAURANT BUSINESS DURING THE PERIOD OF SUSPENSION.

Very truly yours,

Stanley J. Palaski, Secretary
LIQUOR CONTROL COMMISSION

APPENDIX D

PROCEEDINGS IN THE CIRCUIT COURT

CIRCUIT COURT
FOURTEENTH CIRCUIT
HARTFORD, CONNECTICUT

97567

STATE OF CONNECTICUT
vs.
HING WAN WONG

DOCKET NO CR 14-74120
NOVEMBER 10, 1967

BEFORE:

THE HONORABLE HENRY J. NARUK, J.
Mr. Daniel O'Connor, Clerk.

APPEARANCES:

For the State:
Cornelius J. Shea, Esq.
Chief Prosecutor

For the Defendant:
Alexander A. Goldfarb, Esq.
111 Pearl Street
Hartford, Connecticut

Reported by:
Mirjam E. Malbin
Official Court Reporter
Fourteenth Circuit Court
Hartford, Connecticut

MR. SHEA: If Your Honor pleases, there is one more matter I would like to dispose of at this time, CR 14-74120, Hing Wan Wong. Mr. Goldfarb can correct me as to pronunciation.

If Your Honor pleases, the accused is charged with violation of the Liquor Club Laws, Section 30-91. The State is going to nolle the charge for the reasons to be set forth. Unassigned officers went to the premises of the accused at his restaurant at 292 Asylum Avenue here in Hartford and looked through the window; seeing people seated in there. There were the accused and I believe three other persons seated inside after 1 p.m. The accused is the owner of the restaurant. The accused knocked upon the door or the police knocked upon the door and were admitted; came in and at that time conducted a search of the premises without placing the accused under arrest. The search revealed two glasses on the floor, one of which was accidentally spilled in moving the chair, and the other contained an amber-colored liquid, which the police have sent to the laboratory to be analyzed. There's no question in our mind that it is liquor, however, Your Honor, we feel that this search would be subject to question.

THE COURT: Valid defense led to arrest, but no arrest.

MR. GOLDFARB: I filed a Motion to Suppress, Your Honor.

MR. SHEA: A Motion to Suppress has been filed. It has not been argued or decided, but I do feel we cannot prevail on it, and rather than go through the problems of the argument and so forth I will nolle the charge at this time.

MR. GOLDFARB: Your Honor, the Jackson case—the principles of the Jackson case which Judge Jacobs set forth in that case are comparable and apply to this very case. Actually, this man was sitting with two of his employees, two waitresses and another employee in the kitchen in a—in one of the benches, and as a matter of fact, it wasn't even

his liquor, but nevertheless they attributed it to these parties, and completely without foundation, and there's no justification for the arrest we assert, but even if there were some justification, the search was patently illegal and unconstitutional.

THE COURT: The record may reflect a nolle by the prosecutor.

MR. GOLDFARB: Thank you, Your Honor.

CERTIFICATION

COUNTY OF HARTFORD:
ss Hartford, Connecticut, April 16, 1968.
STATE OF CONNECTICUT

STATE OF CONNECTICUT
vs. DOCKET NO: CR 14-74120
HING WAN WONG

I DO HEREBY CERTIFY that the foregoing statements are a complete, true and accurate transcription of the stenotype notes of the proceedings held on November 10, 1967, before Judge Henry J. Naruk, in the Fourteenth Circuit Court, Hartford, Connecticut.

/s/ Mirjam E. Malbin
Official Court Reporter
Fourteenth Circuit Court
Hartford, Connecticut

97567

CR14-74120
STATE OF CONNECTICUT
vs.
HING WAN WONG

: 14TH CIRCUIT COURT
: HARTFORD, CONNECTICUT
: AUGUST 21, 1967

MOTION TO SUPPRESS

The defendant in the above entitled action respectfully moves this court to suppress any and all evidence obtained by the police on or about July 14th, 1967, at premises known as Leng-Hing Restaurant, located at 296 Asylum Street, Hartford, Connecticut, for the reason that such evidence was obtained without a warrant, after an illegal search and seizure, and further, in violation of the pertinent federal and state constitutional rights and privileges of the defendant herein.

DEFENDANT

By
ALEXANDER A. GOLDFARB
His Attorney

Copy to Prosecutor
14th Circuit Court

ORDER

The foregoing motion having been duly presented and heard, it is hereby
ORDERED that the same be and hereby is granted/denied.

BY THE COURT

Clerk

APPENDIX E

STATUTES INVOLVED

§ 30-55. Revocation or suspension of permits; hearing; appeal to stay proceedings

The commission may, of its own motion, revoke or suspend any permit upon cause found after hearing, provided ten days' written notice of such hearing has been given to the permittee setting forth, with the particulars required in civil pleadings, the charges upon which such proposed revocation or suspension is predicated and provided no permit shall be suspended or revoked for any violation of this chapter of which the permittee or his servant or agent was finally found not guilty by, or received dismissal in, a court having jurisdiction thereof, and no disciplinary action shall be taken thereafter by said commission against the backer or such permittee, servant or agent. An appeal from such order of revocation or suspension, if service of the appeal process has been made within ten days from the date of such order but not otherwise, shall, except as provided by section 30-56, operate as a stay of all further proceedings to revoke or suspend such permit, except for some reason not involved in the appeal.

§ 30-60. Appeal

Any applicant for a permit or for the renewal of a permit for the manufacture or sale of alcoholic liquor whose application is refused or any permittee whose permit is revoked or suspended by the commission or any ten residents who have filed a remonstrance pursuant to the provisions of section 30-39 and who are aggrieved by the granting of a permit by the commission may, within ten days thereafter, appeal from such adverse decision to the court of common pleas to the next return day or to the next but one to which

such appeal can be made returnable. Upon such appeal, a transcript of the hearing shall be certified to the court by the commission and the court shall admit so much thereof as is legally competent, relevant and material to the issue within the rules of evidence. The reasons of the commission for refusing the application or revoking or granting the permit may be received in evidence. The court may hear additional testimony if good and sufficient cause is shown for the failure to have offered it to the commission and the court may admit additional testimony if necessary for a just determination of the issues presented. Appeals shall be privileged in respect to the assignment thereof. Costs shall be taxed in favor of the prevailing party as in civil actions, but no costs shall be taxed against the commission. The court, upon such appeal and after a hearing thereon, may reverse or affirm, wholly or partly, or may modify or revise the decision appealed from. If said court decides, upon the trial of such appeal, that the applicant is a suitable person to sell alcoholic liquor and that the place named in his application is a suitable place, within the class of permit applied for or revoked, and renders judgment accordingly, a copy of such judgment shall be forthwith transmitted by the clerk of said court to the commission, and the commission shall thereupon issue a permit to such applicant to sell such alcoholic liquor at such place for the remainder of the permit year, and the fee to be paid therefor, unless the application is for the renewal of the permit, in which case the full fee shall be paid, shall bear the same proportion to the full permit fee for a year as the unexpired portion of the year from the time when such permit was granted bears to the full year. If the court decides on such trial that the applicant is not a suitable person to sell alcoholic liquor or that the place named in the application is not a suitable place, and renders judgment accordingly, a copy of such judgment shall be forthwith transmitted by the clerk of said court to the commission and the commission shall not issue a permit to such applicant or shall rescind the granting of a permit,

as the case may be. If said court upholds the decision of the commission upon the trial of such appeal, or modifies such decision in whole or in part and renders judgment accordingly, a copy of such judgment shall be forthwith transmitted by the clerk of said court to the commission and, if a renewal fee has been paid within the time during which such appeal has been pending, the commission shall thereupon certify to the treasurer a deduction from such fee of a sum which shall bear the same proportion to the full permit fee for a year as the portion of the year from the time when such renewal would have become effective to the time when such judgment was rendered bears to the full year, and the amount of such deduction shall be paid in accordance with the provisions of section 30-5, and the remainder of such fee shall be paid by the state to the applicant.

§ 30-91. Hours and days of closing

The sale or the dispensing or consumption or the presence in glasses or other receptacles suitable to permit the consumption of liquor by an individual or alcoholic liquor in places operating under hotel permits, restaurant permits, cafe permits, club permits and golf country club permits shall be unlawful on the day of any state or municipal election during the hours of voting, and on Sunday after one a. m., Good Friday or Christmas, except when any Sunday is December thirty-first or January first, and except that any town may, by a vote of a town meeting or by ordinance, (a) allow the sale of alcoholic liquor on Sunday between the hours of twelve o'clock noon and nine o'clock in the evening in hotels, restaurants, cafes, clubs and golf country clubs and (b) prohibit the sale of alcoholic liquor from twelve o'clock midnight on Saturday until one a. m. on Sunday; and such sale or dispensing or consumption or presence in glasses or other receptacles suitable to permit the consumption of alcoholic liquor by an individual shall be unlawful on any other day between the hours of one o'clock a. m. and

nine o'clock a. m., except that such sale shall be lawful on January first until three o'clock in the morning. When any Sunday falls on December thirty-first or January first, sale of alcoholic liquor in any club, golf country club, restaurant, cafe or hotel shall not begin before twelve o'clock noon. Any town may, by vote of a town meeting or by ordinance, reduce the number of hours during which such sale shall be permissible. The sale or dispensing of alcoholic liquor in places operating under package store permits, package store beer permits, drug store permits, drug store beer permits or grocery store beer permits shall be unlawful on the day of any state or municipal election, on Good Friday, Decoration Day, Thanksgiving Day, New Year's Day, Sunday or Christmas or, if Decoration Day, Christmas or New Year's Day occurs on a Sunday, on the Monday next following such day; and such sale or dispensing of alcoholic liquor in places operating under package store permits, package store beer permits, drug store permits, drug store beer permits and grocery store beer permits shall be unlawful on any other day before eight o'clock a. m. and after eight o'clock p.m. Any town may, by a vote of a town meeting or by ordinance, reduce the number of hours during which such sale shall be permissible. The sale or the dispensing or consumption or the presence in glasses or other receptacles suitable to permit the consumption of liquor by an individual of alcoholic liquor in places operating under a tavern permit shall be unlawful on the day of any state or municipal election during the hours of voting, on Sunday after one a.m., Good Friday or Christmas; and such sale or dispensing or consumption or presence in glasses or other receptacles in such tavern shall be unlawful on any other day between the hours of one o'clock a.m. and nine o'clock a.m. Any town may, by a vote of a town meeting or by ordinance, reduce the number of hours during which such sale shall be permissible or prohibit the sale of alcoholic liquor from twelve o'clock midnight on Saturday until one a.m. on Sunday. In the case of any tavern wherein, under the provisions of this section,

the sale of alcoholic liquor is forbidden on certain days or hours of the day, or during the period when a tavern permit is suspended, it shall likewise be unlawful to keep such tavern open to, or permit it to be occupied by, the public on such days or hours. In all cases when a town, either by vote of a town meeting or by ordinance, has acted on the sale of alcoholic liquors or the reduction of the number of hours when such sale is permissible, such action shall become effective on the first day of the month succeeding such action and no further action shall be taken until at least one year has elapsed since the previous action was taken.

§ 30-106. Entry into disorderly house by officer

Every officer who has a warrant for the arrest of any person charged with keeping a house of ill-fame, or a house reputed to be a house of ill-fame, or a house of assignation or a house where lewd, dissolute or drunken persons resort, or where drinking, carousing, dancing and fighting are permitted, to the disturbance of the neighbors, or with violating any law against gaming in the house or rooms occupied by him, or with resorting to any house for any of said purposes, and every officer who has a warrant for the arrest of any person charged with keeping open any room, place, enclosure, building or structure, of any kind or description, in which it is reputed that alcoholic liquor is exposed for sale contrary to law, or with selling alcoholic liquor, in any place contrary to law, or for the seizure of alcoholic liquor, may, at any time, for the purpose of gaining admission to such house, room, place, enclosure, building or structure, or for the purpose of arresting any of the persons aforesaid, make violent entry into such house, room, place, enclosure, building or structure, or any part thereof, after demanding admittance and giving notice that he is an officer and has such warrant, and may arrest any person so charged and take him before the proper authority. The commission, its agents, the sheriff of the county, and any deputy sheriff by him specially authorized, and any member of any organized

police department in any town, city or borough, and any state policeman may, at any time, enter upon the premises of any permittee to ascertain the manner in which such person conducts his business and to preserve order.

§ 30-107. Complaint and warrant after arrest

Any state police officer, any sheriff or deputy sheriff acting within his county, or any constable, chief of police or police officer, acting within his town, city or borough, may, without a warrant, arrest any person whom he finds in the act of illegally manufacturing or selling alcoholic liquor, and seize the liquor, vessels and implements of manufacture or sale in the possession of such person and detain them in some place of safe-keeping until warrants can be procured for the arrest of such person and the seizure of such liquor, vessels and implements, under the provisions of this section. The officer making an arrest or seizure as aforesaid shall immediately make complaint to the proper prosecuting officer, who shall immediately make his written complaint to a judge of the circuit court having jurisdiction, who shall issue his warrant based on such complaint and both the complaint and warrant so provided for shall date back to the time of such arrest or seizure, and, in the case of seizure, such action shall then be taken as is provided in the case of seizure of such liquors on complaint and warrant under the provisions of part VI of this chapter.

§ 54-33f. Motion for return of property

A person aggrieved by search and seizure may move the court which has jurisdiction of his case or, if such jurisdiction has not yet been invoked, then the court which issued the warrant, or the court in which his case is pending, for the return of the property and to suppress for use as evidence anything so obtained on the ground that: (1) The property was seized without a warrant, or (2) the warrant is insufficient on its face, or (3) the property seized is not

that described in the warrant, or (4) there was not probable cause for believing the existence of the grounds on which the warrant was issued, or (5) the warrant was illegally executed; provided in no case may the judge who signed the warrant preside at the hearing on the motion. The court shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted, the property shall be restored unless otherwise subject to lawful detention and it shall not be admissible in evidence at any hearing or trial. The motion shall be made before trial or hearing unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial or hearing.